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**FEDERAL COMMUNICATIONS COMMISSION**  
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**In the Matter of**

**Numbering Resource Optimization**

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) CC Docket No. 99-200  
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**To: The Commission**

**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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## SUMMARY

Numbering resources must be utilized efficiently. Equally important is that all telecommunications carriers have timely access to adequate numbering resources so that consumers will receive the full benefits of robust competition in the telecommunications markets. PCIA believes that the FCC has taken important first steps towards reaching these goals in the *Report and Order*. The most important measures include the adoption of uniform national definitions for categories of numbering utilization, the implementation of mandatory reporting requirements, and the creation of a procedure for reclaiming unused numbering resources. PCIA submits that these three measures alone will alleviate many of the FCC's concerns and will make many of the additional optimization measures under consideration unnecessary.

In the *Further Notice of Proposed Rulemaking*, the FCC asks for comment on the criteria that telecommunications carriers which are not subject to pooling (e.g., wireline carriers outside the top 100 MSAs without a bona fide request for number portability and covered CMRS prior to the date number portability must be implemented) must meet in order to obtain growth codes. PCIA submits that it would be overly difficult, if not impossible, to select a rational and non-discriminatory "one-size-fits-all" utilization threshold if that threshold is the sole basis upon which applications for additional numbering resources are evaluated. Rather, the FCC should instruct the NANPA to approve an application for additional numbering resources when the applicant meets a specific rate center-based utilization threshold or the applicant's months-to-exhaust ("MTE") worksheet demonstrates that it has less than a six-month inventory of numbering resources for the relevant rate center.

In any event, the FCC should not adopt a utilization threshold that exceeds 50%, because the current utilization formula fails to account for significant differences among categories of numbering usage and thus has a discriminatory effect on certain classes of carriers and end users. Specifically, requiring carriers to exceed a 50% utilization rate under the current utilization formula would discriminate against new entrants and small carriers, who would not be able to compete fairly with incumbent carriers.

The FCC should establish uniform, nationwide procedures for granting requests for additional numbering resources, and the FCC in conjunction with the NANPA should implement these procedures in accordance with the national framework that the FCC established in the *Report and Order*. However, the FCC should not seek to develop a threshold for utilization calculated on a nationwide basis, or anything other than a rate center basis. Finally, the FCC should ensure that the procedure for granting growth codes is quick and certain, and that neither NANPA nor the state commissions need to engage in a detailed, protracted analysis of applications for growth codes.

With respect to implementation of number pooling by covered CMRS carriers, PCIA urges the FCC to look to when pooling can be successfully implemented rather than to focus on a particular transition period. For example, the FCC must consider that expiration of LNP forbearance coincides both with the holiday network “quiet period” for wireless and wireline networks and the selection of new NANPA and Pooling Administrators. Therefore, it would be appropriate to delay the initiation of the transition period for six to nine months, and then provide for a transition period that is as long as the 30-month transition period that the wireline carriers enjoyed and that is implemented in the same staggered fashion.

Finally, PCIA urges the FCC not to adopt a market-based allocation scheme.

First, the FCC does not have authority under the 1996 Act to auction numbering resources.

Under the 1996 Act, the FCC has the discretion to determine the “cost” of establishing numbering administration arrangements, but it cannot require carriers to pay any charges or fees that exceed these costs. The FCC has already established cost recovery mechanisms for number porting, number pooling and the administration of numbers themselves, and thus there are no further “costs” that remain to be recovered. Equally important, however, is that auctions would not improve the efficiency with which carriers utilize numbering resources. Indeed, auctions of numbering resources would create additional artificial scarcity, and punish new entrants.

Instead, PCIA urges the FCC to permit the number optimization measures adopted in the *Report and Order* to take effect rather than explore auctions of numbering resources, which will interfere with the effectiveness of these measures.

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CC Docket No. 99-200

To: The Commission

**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (“PCIA”),<sup>1</sup> by its attorneys, hereby respectfully submits its comments on the Commission’s *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding.<sup>2</sup> PCIA has a vital interest in ensuring both that numbering resources are utilized efficiently and that all carriers – both large and small, incumbent and new entrant – have timely access to adequate numbering resources.

As explained in more detail below, PCIA urges the FCC (1) to evaluate requests for growth codes based on utilization rates or MTE worksheets for the rate center in which the code would be utilized, (2) to adopt a maximum rate center-based utilization threshold of 50%, (3) not to require non-LNP-capable carriers to implement number pooling immediately upon becoming LNP-capable, and (4) to reaffirm that charging for numbering resources is beyond the

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<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA’s Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance.

<sup>2</sup> *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) (“*FNPRM*”).

FCC's statutory authority and inappropriate because it would have no effect on utilization efficiency and would not serve the public interest.

**I. REQUIREMENTS FOR GROWTH CODES SHOULD FOCUS EITHER ON THE UTILIZATION RATE OR THE MONTHS-TO-EXHAUST WORKSHEET FOR THE RATE CENTER IN WHICH THE GROWTH CODE WILL BE UTILIZED**

In the *Report and Order*, the FCC recognized that numerous carriers are not LNP-capable, and thus would not be able to obtain or utilize numbering resources in blocks of less than 10,000.<sup>3</sup> The FCC now rightly seeks comment on the utilization thresholds that non-LNP-capable carriers should be required to meet in order to obtain additional NXX codes.<sup>4</sup> Specifically, the FCC seeks comment on the appropriateness of both national- and rate center-based utilization thresholds, as well as the degree to which state commissions should be able to modify or set rate center-based utilization thresholds.<sup>5</sup>

As explained more fully below, PCIA submits that requirements for additional numbering resources must be tied to specific rate centers, allowing carriers to receive additional numbering resources based either on the utilization rate or months-to-exhaust ("MTE") worksheet for the rate center in which the additional numbering resources will be utilized. The FCC should establish uniform, nationwide procedures for granting requests for additional numbering resources, and the FCC in conjunction with the NANPA should implement these procedures in accordance with the national framework that the FCC established in the *Report and Order*. However, the FCC should not seek to develop a threshold for utilization rates

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<sup>3</sup> *Id.* at ¶¶136-38.

<sup>4</sup> *Id.* at ¶248.

<sup>5</sup> *Id.*

calculated on a nationwide basis, or anything other than a rate center basis. Finally, the FCC should ensure that the procedure for granting growth codes is quick and certain, and that neither NANPA nor the state commissions need to engage in a detailed, protracted analysis of applications for growth codes. PCIA strongly believes that it is crucial to fulfill requests for additional numbering resources as expeditiously as possible, particularly given the new rules that encourage carriers to minimize their reserves of additional numbering resources.

**A. Applications For Growth Codes Should Be Granted When The Applicant Meets A Specific Rate Center-Based Utilization Threshold Or Does Not Have A Six-Month Inventory of Numbering Resources.**

In the *Report and Order*, the FCC adopted a requirement that non-LNP-capable carriers achieve a number utilization threshold before they are eligible to obtain a new growth code.<sup>6</sup> In past filings, PCIA has explained that it supports utilization thresholds as one means of identifying when a carrier has a genuine need for additional numbering resources. PCIA continues to believe that carriers who exceed a certain utilization threshold should receive growth codes, because a relative high utilization rate is one proxy for genuine need for additional numbering resources. However, the FCC should not rely solely on a “one-size-fits-all” utilization threshold to determine when a carrier has a genuine need for additional numbering resources.

PCIA submits that it would be overly difficult, if not impossible, to select a rational and non-discriminatory “one-size-fits-all” utilization threshold if that threshold is the sole basis upon which applications for additional numbering resources are evaluated. A carrier’s

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<sup>6</sup> *Id.* at ¶141.



utilization rate is not a direct proxy for that carrier's need for additional numbering resources.

Under many circumstances, a carrier may have a genuine need for additional numbering resources despite having a relatively low current utilization rate. For example, a carrier that has a relatively low current utilization rate might nonetheless need additional numbering resources (1) to meet consumer demand in a high growth area; (2) to fulfill a single order from a large customer; (3) to fulfill simultaneous orders from multiple customers; (4) to introduce a new service offering or promotions on existing products and services; (5) to prepare for seasonal demands; (6) to compete with other carriers to serve a new subdivision, office park or campus; (7) to offer specialized services such as Calling Party Pays or Reverse Toll Billing; or (8) to migrate from Type 1 to Type 2 interconnection. In each of these circumstances, a carrier has an immediate and certain need for a large quantity of numbers that it may not be able to satisfy from its inventory of available numbers, without regard to its current utilization rate. Accordingly, the size of a carrier's inventory of available numbers is a more direct proxy for that carrier's need for additional numbering resources than its utilization rate.

Although the size of a carrier's inventory of available numbers depends in part upon the efficiency with which the carrier utilizes numbering resources, many factors unrelated to efficiency affect a carrier's utilization rate. For example, an individual carrier's utilization rate is affected by, among other things, the carrier's size, the length of time that the carrier has been providing service within that particular rate center, the types of services that the carrier provides, the types of end users that the carrier serves (large, medium or small business or residential), the types of markets that the carrier serves (rural or urban), and whether it offers specialized services such as Calling Party Pays or Reverse Toll Billing, or is migrating to a different interconnection arrangement. Accordingly, if applications for growth codes are

evaluated solely on the basis of a “one-size-fits-all” utilization rate, the assignment procedure for growth codes will be inherently discriminatory with respect to certain types of carriers and consumers.

The FCC recognized the difficulty in selecting a fair and non-discriminatory “one-size-fits-all” utilization threshold when it adopted a threshold contamination level for mandatory donation of thousands-blocks to a number pool. Although the FCC concluded that it “should adopt a uniform contamination threshold for all carriers to avoid a discriminatory impact on any particular segment of the telecommunications industry,” it allowed carriers to retain a sufficient number of thousands-blocks to meet its six-month projection forecast, as determined by the carrier’s MTE worksheet.<sup>7</sup>

PCIA fully supports the FCC’s conclusion that carriers are entitled to a six-month inventory of numbers in order to assure adequate access to numbering resources.<sup>8</sup> As the FCC recognized, this flexibility is necessary to ensure that carriers have adequate numbering resources and that the contamination threshold does not have a discriminatory impact on any particular segment of the telecommunications industry.

PCIA urges the FCC to adopt the same flexibility for the utilization threshold as it adopted for the contamination threshold. To the extent that the FCC is concerned about carriers obtaining numbering resources that they do not need, it now has swift and certain procedures for detecting and reclaiming unused numbering resources. Therefore, the FCC should instruct the NANPA to approve an application for additional numbering resources when the applicant meets

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<sup>7</sup> See *id.* at ¶¶189, 191, 241

<sup>8</sup> See *id.* at ¶¶189, 191, 241 and §52.15(g)(3)(i)(B)(ii).

a specific rate center-based utilization threshold or when the applicant's MTE worksheet demonstrates that it does not have a six-month inventory of numbering resources.

**B. Applications For Growth Codes Must Be Evaluated On the Basis of the Rate Center-Based Utilization Rates or MTE Worksheets.**

Although the FCC took important steps to improve the method for allocating numbering resources, it did not mandate rate center consolidation or alter the relationship between rate centers and call rating. The incumbent local exchange carriers ("ILECs") created rate centers in order to establish fixed areas for the purpose of ensuring consistent mileage measurements for billing purposes. The charge for a specific call is computed based upon the respective rate centers of the calling and called parties. In addition to billing procedures, rate centers often affect LNP procedures, because LNP-capable carriers who port numbers to and from each other must share the same rate center structure under most current industry LNP agreements. For these and other reasons, many CLECs and wireless carriers choose, or are forced by competitive pressure, to match the rate center system of the ILECs.

Competitive and wireless carriers that match the ILECs' rate center system are forced to request numbering resources in each rate center, without regard to the quantity of customers in that rate center, because numbering resources must be assigned to a particular rate center and cannot be shared between multiple rate centers.<sup>9</sup> The demand for numbering resources can vary dramatically from rate center to rate center and even between adjacent rate centers. Thus, a carrier can have a legitimate need for additional numbering resources in a

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<sup>9</sup> For example, if a new entrant wants to serve just a single line in a rate center, it must obtain a full NXX code (10,000 numbers).

particular rate center (*e.g.*, a rate center in a high-growth urban area) despite having a relatively low utilization rate in all of the surrounding rate centers, because numbering resources cannot be shared between rate centers. Therefore, the FCC should evaluate a carrier's need for additional numbering resources at a rate center level by looking at the carrier's utilization rate and MTE worksheet for that particular rate center, and that rate center only.

In contrast to rate center-based utilization thresholds and MTE worksheets, however, there is no basis for evaluating a carrier's utilization threshold or MTE worksheet on a nationwide, statewide or even NPA-wide basis. If calculated on such a basis, a carrier's utilization rate has no rational relationship to its need for additional numbering resources in a particular rate center because numbers are not fungible resources that can be shared between states, NPAs or even rate centers. Evaluating applications for additional numbering resources on the basis of utilization rates calculated on a non-rate center basis could prevent many carriers from receiving additional numbering resources in those rate centers where they are most needed. It might also discourage some carriers from entering rural markets, which could lower a carrier's utilization rate if calculated on a nationwide basis, for fear that they would not be able to obtain additional numbering resources when needed in high-growth areas. Accordingly, the FCC should not require carriers to calculate utilization rates on a nationwide basis or adopt criteria for evaluating applications for additional numbering resources on anything other than rate center-based utilization rates and MTE worksheets.

**C. The FCC Should Ensure That The Utilization Rate Formula Focuses On The Actual Need for Additional Numbering Resources.**

One purpose for establishing a rate center-based utilization threshold is to allow a carrier to demonstrate that it has a legitimate need for additional numbers. Therefore, the

formula for calculating utilization rates should focus on the amount of numbers that are actually available for assignment to customers. Accordingly, not every category of numbering use should be treated equally in the utilization formula, because carriers do not exercise the same amount of control over each numbering category. Specifically, categories of numbering use that have no bearing on the amount of numbers actually available for assignment for end users, and over which a carrier has little or no ability to use more efficiently, should not count against a carrier when it applies for additional numbering resources, particularly when the percentage of numbers in each category varies by type of carrier, technology, location and target market.

PCIA fully supports the FCC's decision to adopt uniform national definitions for categories of numbering use. These definitions should help to identify numbers that are not available for assignment to end users and ensure that all carriers are operating under the same understanding about how these numbers should be classified. The reporting requirements will ensure that carriers report these categories of numbering use accurately. Any incorrect reporting or inefficient use of numbering resources will be detectable from the semi-annual or annual reports that all carriers must file. Therefore, PCIA urges the FCC to tailor the formula for calculating number utilization carefully so that it accurately reflects a carrier's need for additional numbering resources.

The utilization threshold calculation that the FCC adopted in the *Report and Order* requires carriers to divide assigned numbers by the total numbering resources assigned to that carrier.<sup>10</sup> As such, the utilization calculation treats all categories of numbering use equally, despite the significant differences in the amount of control that carriers have over numbering

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<sup>10</sup> See *id.* at ¶109.

resources in these categories. PCIA urges the FCC to (1) identify those categories of numbering utilization that are not available for assignment, (2) determine which of these categories do not vary significantly with a particular carrier's efficiency, and (3) reduce the utilization threshold to account for these categories or add them to the numerator with assigned numbers. The FCC should also consider whether it would be appropriate to exclude categories of numbers that are unavailable for assignment to end users and that vary by type of carrier, technology, location and target market. Failing to account for differences of usage within these categories in the utilization rate formula or utilization threshold would discriminate against various classes of carriers and end users.

For example, PCIA submits that the FCC should either include aging numbers in the numerator along with assigned numbers in the formula for calculating number utilization or reduce the utilization threshold accordingly. Industry guidelines and the rules in some states require numbers to be aged for a specific period of time; during this time frame, a carrier has no ability to assign these number to end users or to improve the efficiency of their use. Wireless carriers in particular have a relatively high percentage of aging numbers due to the relatively high churn rate of wireless services. To the extent that the FCC is concerned about potential abuse and the manipulation of aging numbers, the FCC could require a carrier to identify the amount of aging numbers included in the utilization calculation. The FCC also will have reporting data from each carrier so it would be possible to determine easily if a carrier is manipulating its numbers for the purpose of computing the utilization rate.

For similar reasons, the FCC should include administrative numbers in the numerator of the utilization calculation or reduce the utilization threshold accordingly. All carriers need to use a certain percentage of their numbers for administrative purposes. Wireless

carriers in particular must use a significant amount of numbers to facilitate roaming. PCIA submits that the FCC should determine a reasonable percentage of administrative numbers that should be included within the numerator of the utilization calculation or reduce the utilization threshold accordingly.

The FCC should also include reserved numbers in the numerator of the utilization calculation or reduce the utilization threshold accordingly. By definition, reserved numbers are those that are “held by service providers at the request of specific end users or customers for their future use.” In essence, reserved numbers have been temporarily “assigned” to a particular end user or customer and are not available for assignment. Under the FCC’s new rules, carriers can only reserve numbers at the specific request of an end user, and then can only keep the number on reserved status for 45 days. Carriers that are in compliance with the FCC’s rules thus have absolutely no control over the amount of reserved numbers that they have. Apart from refusing to reserve numbers on behalf of its customers, which no carrier should be required to do, a carrier cannot “use” reserved numbers more efficiently. Accordingly, reserved numbers should be included in the numerator portion of the utilization threshold computation, or the utilization threshold should be reduced accordingly. As with aging and administrative numbers, the FCC will be able to detect misuse of reserved numbers through the reporting requirements.

Likewise, the FCC should also include intermediate numbers in the numerator of the utilization calculation or reduce the utilization threshold accordingly. Intermediate numbers are not available for assignment because they either are assigned to resellers or are awaiting sale but allocated to particular CPE.

Finally, certain services, including Calling Party Pays and Reverse Toll Billing, require separate NXX codes. These services should not be lumped together with other NXX

codes in determining utilization. Rather, these numbers should be separately evaluated on the same rate center-by-rate center basis.

**D. The Rate Center-Based Utilization Threshold Should Not Exceed 50%.**

In its reply comments to the *Notice of Proposed Rulemaking* in this proceeding, PCIA supported a utilization rate of between 60% and 70%. However, as the Commission recognizes, many commenting parties, including PCIA, based their recommended utilization rates on a different formula for calculating the utilization rate.<sup>11</sup> As explained above, the FCC should amend the utilization formula so that it focuses on the amount of numbers that are actually available for assignment to customers. If the FCC does not amend the current utilization formula to account for numbering categories that do not vary significantly with the efficiency with which particular carriers' utilize numbering resources, the utilization threshold should not exceed 50%.

PCIA submits that it is particularly important that the utilization threshold be no higher than 50% given the effect of intermediate numbers on utilization rates. Under the current utilization formula, intermediate numbers may actually reduce the utilization rates of many carriers – even if these numbers have been assigned to end users – because these carriers are not able to determine when the intermediate number has been assigned to an end user. The relationship between carrier and reseller is governed by a reseller agreement. Under some reseller agreements, individual numbers are activated only after they are assigned to an end-user. Under other reseller agreements, individual numbers are activated when they are given to the

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<sup>11</sup> See *id.* at ¶115.



reseller, and the carrier may not be able to determine when the reseller has assigned the number to an end user. PCIA urges the FCC not to set the utilization threshold above 50%, because a high threshold could prevent certain carriers from obtaining genuinely needed numbering resources merely due to the treatment of intermediate numbers under the FCC's rules.

**E. The FCC Should Establish Clear, Uniform and National Criteria For Granting Applications For Growth Codes That Do Not Require The NANPA To Make Difficult, Protracted Evaluations**

In the *Report and Order*, the FCC requested comment on whether states should be allowed to set the rate-center based utilization threshold within a range established by the FCC.<sup>12</sup> PCIA respectfully submits that rate center-based utilization thresholds must be applied evenly throughout all the states, and that state commissions should not be allowed to set the rate center-based utilization threshold within a range established by the FCC. The FCC already has correctly concluded that numbering resource optimization is a national issue. To maximize efficient allocation of resources, each state must be required to abide by the same rate center-based utilization threshold. Allowing states to adopt different rates would encourage variations in the implementation of the threshold requirement, which could unnecessarily raise costs and delay the allocation of additional numbering resources. In addition, it is doubtful that there is any significant justification for variations by state, because utilization rates in California should not be different than in New York.

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<sup>12</sup> *Id.*

## **II. NON-LNP-CAPABLE CARRIERS SHOULD NOT HAVE TO IMPLEMENT NUMBER POOLING IMMEDIATELY UPON BECOMING LNP-CAPABLE**

The Commission seeks comment as to a transition period for covered CMRS carriers to participate in thousands block pooling upon expiration of the LNP forbearance period on November 24, 2002. PCIA believes that under no circumstances should the transition period be a “flash-cut” to participation commencing November 25, 2002. The FCC must understand that the LRN-LNP infrastructure that makes thousands block pooling feasible does not represent the pooling mechanism itself. For covered CMRS carriers, pooling is a cost-intensive undertaking and not a mere “add-on” to LNP capability. As the Commission has noted, thousands-block pooling by itself requires service providers, together with equipment vendors, to undertake modifications to service provider local Service Management Services (“LSMSs”) and Service Control Points (“SCPs”), enhancements to Service Order Administration systems (“SOAs”), and operations support systems (“OSS”), as well as enhancements to switches and subsequent testing of those switches.<sup>13</sup> Substantial time, as noted below, will be required for pooling to be developed and implemented.

PCIA urges the FCC to look to a set of circumstances under which pooling can be successfully implemented for covered CMRS carriers rather than focus on a particular transition period. For example, while a precise transition date cannot be selected at this time, the FCC needs to be aware that the holiday network “quiet period” for both wireless and wireline networks coincides with the expiration of LNP forbearance in November of 2002. During this time, by industry consensus and assent, no changes are made between and among wireless and

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<sup>13</sup> See *id.* at ¶167. The NANC had suggested 10-19 months for implementation following an Order.

wireline networks. Also corresponding with the holiday network change “quiet period” and expiration of LNP forbearance, wireless carriers have their busiest sales period of the year between Thanksgiving and the first few weeks after New Years Day. All resources are focused on accommodating new subscribers onto the network. Indeed, for many wireless carriers, half their annual sales are booked during the holiday season.

The Commission should also keep in mind that new NANPA and national pooling administrators may be selected during the autumn of 2002. Accordingly, during this critical time period carriers may also be faced with working with a new NANP administrator as well as a new national Pooling Administrator. Therefore, considering the holiday “quiet period” and a reasonable transition schedule associated with potentially having new administrators, a minimum transition period of six to nine months following November 24, 2002 for covered CMRS participation in thousands-block pooling is appropriate. This would correspond to a commencement period approximately between June 1 and September 1, 2003.

In determining an appropriate transition period, the Commission should be aware that the wireline industry will have had approximately two and one-half years to implement national pooling. Specifically, wireline LNP in the top 100 MSAs was implemented in December 1998, some 30 months prior to the beginning of the FCC’s expected roll-out of pooling in June 2001, the date falling nine months after the Commission’s anticipated selection of a national Pooling Administrator. Accordingly, considering the substantial network changes required just for pooling noted above, it would be appropriate for the covered CMRS transition

period to pooling to be just as long, and to be implemented in the staggered fashion developed by the Commission for carriers that are presently required to be LNP-capable.<sup>14</sup>

### **III. THE FCC DOES NOT HAVE THE AUTHORITY TO CHARGE FOR NUMBERING RESOURCES, AND AUCTIONING WOULD NOT IMPROVE EFFICIENCY**

In the *FNPRM*, the FCC seeks further comment on how a market-based allocation system (*i.e.*, auctioning numbering resources)<sup>15</sup> would affect the efficiency of allocation of numbers among carriers. The FCC first raised the issue of a market-based allocation system in the *Notice*, where it explained its belief in the importance of considering price-based mechanisms as a possible long-term alternative to administrative numbering allocation and as a supplement to, or substitute for, mandatory numbering optimization measures such as pooling and rate center consolidation.<sup>16</sup> The FCC asked for comment on market-based allocation systems because it assumed that inefficient numbering utilization may be due in part to the fact numbering resources are administratively allocated rather than sold – that is, they are priced at zero. PCIA urges the FCC to recognize that the root causes of inefficient numbering utilization are unrelated to the price of numbering resources, and thus auctioning numbering resources would have little to no effect on utilization efficiency. In any event, the FCC need not reach this determination because it does not have statutory authority to auction numbering resources.

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<sup>14</sup> See *id.* at ¶161 (establishing a quarterly schedule containing three NPAs from each of the seven NPAC regions within the largest 100 MSAs).

<sup>15</sup> See *Notice*, 14 FCC Rcd at 10420, ¶233.

<sup>16</sup> See *id.*

**A. The FCC Does Not Have The Authority to Auction Numbering Resources.**

The FCC does not have the authority under the 1996 Act to auction numbering resources. Section 251(e)(2) provides that

The *cost* of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.<sup>17</sup>

Although the FCC has discretion to determine the “cost” of establishing numbering administration arrangements, it cannot require carriers to pay any charges or fees that exceed the costs. Moreover, the FCC may only determine the cost of “establishing numbering administration arrangements and number portability,” not for numbers themselves. The FCC has already established a cost recovery mechanism for number portability and number administration, and it adopted a cost recovery mechanism for number pooling in the *Report and Order*. Consequently, there are no “costs” for “establishing numbering administration arrangements and number portability” that remain to be recovered. Moreover, 252(e)(2) does not authorize the FCC to collect fees from carriers to cover costs and then use these funds for unrelated purposes. Rather, the FCC merely determines the costs of numbering administration arrangements and number portability and ensures that these costs are “borne by all telecommunications carriers on a competitively neutral basis.”

PCIA strongly rejects the FCC’s suggestion in the *NPRM* that auctioning would reflect the “societal costs” of numbering resources. The term “cost” as used in the 1996 Act cannot reasonably be interpreted as the “price” that a carrier would be willing to pay. The

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<sup>17</sup> 47 U.S.C. § 251(e)(2) (emphasis added).

unacceptability of this interpretation becomes immediately apparent when viewed in another context. For example, neither the Commission, the states, nor the courts would accept an interpretation of the term “cost” as used in Section 252(e)(2) that would allow ILECs to set interconnection rates through an auction procedure on the theory that the rates would then reflect the societal costs of interconnection. The FCC rejected similar arguments from the ILECs with respect to revenue recovery after the 1996 Act. In any event, the FCC cannot point to any actual cost basis for the prices that would justify auctioning numbering resources.

The FCC cannot interpret its plenary authority over numbering administration to include the authority to auction numbering resources. If the FCC’s authority were broad enough under Section 251(e)(1) to include auctioning of numbering resources, Congress would not have needed to authorize the Commission to determine the costs of establishing telecommunications numbering administration arrangements and number portability in Section 251(e)(2). Rather, Section 251(e)(2) must be interpreted either as a limitation of the FCC’s authority under Section 251(e)(1) or as an explicit additional authorization – which does not itself authorize the FCC to auction numbering resources – that was not included within the grant of authority under Section 251(e)(1).

In the international context, it is unclear what entity would receive the proceeds from any pricing mechanism for numbering resources. The North American Numbering Plan (“NANP”) is used by eighteen countries, including the United States, Canada and several Caribbean countries. Because the Commission has no authority over subscribers in other countries, it would be unable to dictate what entity should receive proceeds when subscribers

from other countries are involved.<sup>18</sup> Therefore, any rules that it would adopt could only apply to U.S. carriers, which provides further confirmation that Congress has not authorized the FCC to auction numbering resources.

**B. Auctioning Numbering Resources Would Not Improve Efficiency.**

The primary cause for inefficient numbering utilization is the current allocation and rate center system, which were designed and optimized for a monopoly environment. Rate centers, and thus numbering utilization, have historically been driven by ILEC rating systems, not numbering concerns. Under this system, all types of carriers, whether ILEC, CLEC or wireless, frequently require numbering resources in each rate center. New entrants have no choice but to request more numbers than they actually need in order to compete with the ILEC, which designed rate centers to support its own revenue scheme: flat rate or toll call as determined by originating and terminating points by rate centers. The best way to increase utilization efficiency is to reduce the quantity of numbers that carriers must request by consolidating rate centers, as PCIA has explained in past filings and the Commission itself has recognized. Rate center consolidation would make allocated numbers more readily and efficiently usable.

In the absence of rate center consolidation, new entrants would still be forced to request the same amount of numbers in order to compete with the incumbent, even if numbering resources were auctioned. Auctioning either would keep competitive carriers from entering the market altogether or raise their costs unnecessarily, but it would have no effect on the quantity of

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<sup>18</sup> *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, ¶16 (1998).

numbers that the new entrants would be forced to request. Under these circumstances, the incumbents would have an incentive to bid up the auction price as high as possible to discourage competitive carriers from entering the market. Auctioning could also adversely affect rural areas where numbering pooling might not be implemented, because it would further raise costs in areas that typically have many smaller business and lower income end users. This result is inconsistent with the 1996 Act, and should be rejected without further consideration. In addition, because number auctions would only affect new numbers, incumbent carriers would enjoy a significant cost advantage over new entrants.

PCIA urges the FCC to let the measures it adopted in the *Report and Order* to take effect rather than explore auctioning of numbering resources, which will interfere with the effectiveness of these measures. A decision to auction numbering resources cannot be reconciled with the policy goals underlying the measures implemented in the *Report and Order* or the FCC's rules. These measures and rules are based on the idea that numbers are a public resource in which no carrier or end user has an ownership interest. Accordingly, brokering of numbering resources is prohibited, and carriers have no right to hoard or retain numbers that they are not using in accordance with the FCC's rules to provide telecommunication services to end users.

Auctioning numbering resources would encourage the same practices that the rules are designed to prevent, and will compound the monitoring and enforcement problems associated with those rules. Despite the Commission's anti-brokering rules, charging for numbering resources would imply, if not endorse, the concept that numbers are a tradable commodity. Specifically, carriers that buy numbers could not be expected to give them back. The Commission cannot have it both ways. Either numbers are not a tradable commodity, in which case auctions are inappropriate, or the FCC's current rules and the measures adopted in



the *Report and Order* must be abandoned. If the FCC maintains its policy that numbers are not a tradable commodity, then it cannot implement auctioning for numbering resources. However, auctioning numbering resources in the absence of the FCC's current rules would not improve efficiency.

Auctioning telephone numbers would also be fundamentally inconsistent with past FCC auctioning practices. When the FCC auctions spectrum, the winning carrier receives an individual license for specifically identified frequencies. This license has a term of ten years, with an expectation of renewal. Thus, bidding carriers are able to place a value on the spectrum because they can assume that they will have exclusive use of the spectrum for a minimum of ten years. By contrast, numbering resources are much more transitory in nature than spectrum license. The Commission has repeatedly emphasized that there can be no ownership interest in individual telephone numbers. After a number is assigned to an end user by the carrier who is providing service to that end user, it may be (1) returned to the carrier if that end user discontinues service and aged before the carrier assigns the number to another end user; (2) returned to the carrier if that end user discontinues service, and the carrier may return the number to NANPA or the Pooling Administrator; or (3) the number may be ported to another carrier if the end user selects another carrier to provide service using the number. This cycle can repeat endlessly, particularly given the new pooling and porting obligations. Therefore, auctions would not work for numbering resources as they do for spectrum, even if the FCC did have the authority to implement auctions.

The FCC should also not underestimate the administrative burdens of charging for numbering resources and the delay in issuing numbers that auctions would most likely cause. The Commission would have to establish the accounts and rules, monitor compliance, and ensure

coordination with the database. The additional accounting requirements associated with pricing would also increase the administrative overhead of providing services. This cost would undoubtedly find its way to customers, which would inhibit demand for the underlying telecommunications and information services. The Commission should focus instead on implementation and enforcement of the new numbering rules and further rate center consolidation.

In addition to exceeding the Commission's authority under Section 252(e)(2), auctioning for numbering resources cannot be reconciled with the goals of the 1996 Act. The 1996 Act is premised on the idea of fostering competition and removing barriers to market entry. Requiring carriers to pay for numbering resources would create new entry barriers, inhibit competition, and discriminate against various classes of carriers and consumers. Pricing for numbering resources does not guarantee efficient allocation of numbering resources and most certainly would have a negative effect on the ability of smaller carriers to compete effectively. Pricing would have a competitively negative impact on smaller providers and none of the desired impact on larger ones.

Any type of fee would simply reward the party willing to pay the most for numbering resources, not the party who is using numbering resources efficiently, particularly in jeopardy areas. Pricing for numbering makes no distinction between those carriers that have abused the system and those who have played by the rules. Economic theory posits that the highest use of a resource may be to deny it to competitors. Any payment scheme will create incentives for large, well-funded carriers to inhibit competition by buying all the numbering resources, or at least raising the cost for obtaining numbering resources, so their less well-funded competitors will fail. In addition, not all uses of numbers can be valued equally. For example, a

higher revenue service, such as broadband PCS (\$50 average monthly revenue per unit), will support a higher cost per number than a lower revenue service, such as paging (\$9 average monthly revenue per unit) or local phone service in some areas.

A pricing requirement on top of the costs that carriers incur to maintain a reservoir of available numbers would only further increase the costs of business to all parties, including the end users, with no corresponding benefit. Under these circumstances, requiring small carriers to pay for numbering would be inequitable and would harm competition in the telecommunications and information services market. Auctioning numbering resources would also serve as yet another obstacle to the ability of small businesses to effectively compete against larger competitors, because larger businesses and end users would be able to absorb the costs with less effort. The Commission cannot and should not discriminate between telecommunications carriers or services in this fashion. For these reasons, PCIA continues to concur with the broad consensus of parties whose comments in response to the *NPRM* stated that carriers should not be required to pay for numbering resources.<sup>19</sup>

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<sup>19</sup> See, e.g., Ameritech Comments at 53-57; AT&T Comments at 61-63; Bell Atlantic Comments at 6-7; Choice One and GST Comments at 5; GTE Comments at 60-63; Liberty Comments at 6; MCI WorldCom Comments at 48-50; NEXTLINK Comments at 21-24; Omnipoint Comments at 31-34; Qwest Comments at 6-7; Time Warner Comments at 22-23; USTA Comments at 12; WinStar Comments at 38-41.

## CONCLUSION

For the foregoing reasons, the FCC should (1) evaluate requests for growth codes based on utilization rates or MTE worksheets for the rate center in which the code would be utilized, (2) change the calculation of the utilization rate as described herein or ensure that the utilization threshold does not exceed 50%, (3) not require non-LNP-capable carriers to implement number pooling immediately upon becoming LNP-capable, and (4) reaffirm that charging for numbering resources is beyond the FCC's statutory authority and inappropriate because it would have no effect on utilization efficiency.

Respectfully submitted,

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May 19, 2000

## **CERTIFICATE OF SERVICE**

I, Kathleen T. Peacock, do hereby certify that on this 19<sup>th</sup> day of May 2000, a copy of the foregoing was served, by hand delivery, to the parties listed below:

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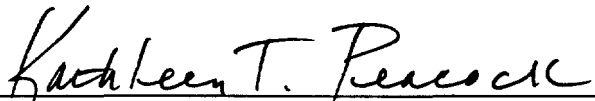
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